IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10951 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIPAK ISHWARLAL JARIWALA

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR HH PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/02/2001

ORAL JUDGEMENT

#. Challenge has been made by the petitioner to the order dated 5-10-2000 of the Police Commissioner, Surat city under which he was detained as a bootlegger.

#. Reply to the special civil application has not been

filed though this matter was admitted on 18-10-2000. Learned counsel for the petitioner submitted that delay is there at both the stages i.e. taking decision on representation filed by the petitioner as well as in communication of the decision taken thereof to the petitioner. In para-36 (A) of the special civil application, the petitioner stated:

> 36 (A) The petitioner submits that his relative made a representation dated 17-10-2000 addressed to the Hon'ble Chief Minister of Gujarat, which was sent by registered post on 18-10-2000, which was received in the office of the Hon'ble Chief Minister on 19-10-2000. However, the said representation was rejected by the State Government only on 8-11-2000 and the result thereof came to be communicated to the detenu in jail only on 22-11-2000. Thus, there is a long unexplained and unreasonable delay in considering the said representation by the State Government and in communicating the result thereof, which has affected the right of the petitioner to make effective representation. The copy of the said representation along with affidavits is annexed herewith and is marked as Annexure AA.
>
> Along with said representation, the petitioner annexed copy of two affidavits of respective persons, wherein, it was stated that on inquiry from the areas stated by anonymous witnesses, it was revealed that no such incidents as stated by those anonymous witnesses happened in those areas on the specified date and time and therefore, there is no question of involvement of the detenu. Since this was pointed in the representation, the respondent No.2 was required to make inquiry regarding the genuineness of the affidavit and also he was required to make inquiry regarding genuineness and truthfulness of the say of the witnesses and truthfulness of the say of the witnesses, however, without making such inquiries, the representation was rejected mechanically and without application of mind. Mere rejection of representation is not consideration thereof and considering the representation is not an idle formalities. Since the aforesaid representation is considered mechanically, the right of the detenu to make effective representation is affected.

#. These factual averments made by the petitioner are uncontroverted. So the respondents have not explained delay at both the stages and this matter is squarely covered by the decision of this Court given in special civil application No.7864/2000 decided on 26-9-2000 (Coram: H.H. Mehta,J).

#. In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 5-10-2000 is quashed and set aside. The petitioner Dipak Ishwarlal Jariwala, the detenu, at present in District Jail, Rajkot be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. No order as to costs.

****

zgs/-